

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

AN INVESTIGATION INTO THE INTRASTATE)	
SWITCHED ACCESS RATS OF ALL KENTUCKY)	ADMINISTRATIVE
INCUMBENT AND COMPETITIVE LOCAL)	CASE NO. 2010-00398
EXCHANGE CARRIERS)	

PETITION FOR CONFIDENTIAL PROTECTION

MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services (“Verizon Access”) hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c) to grant confidential protection to certain information included in response to the Commission’s May 30, 2012 Order that directed Verizon Access to file revisions to its Kentucky access services tariff. Specifically, Verizon Access petitions the Commission to grant confidential treatment to the confidential compliance worksheet containing the information listed in Ordering paragraphs 1(a) through 1(c) of the Order and reflecting its calculation of the July 3, 2012 intrastate access rates. In support of this Petition, Verizon Access states as follows:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information, including records generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of the party seeking confidentiality. *See Southeastern United Medigroup v. Hughes*, 952 S.W. 2d 195, 199 (Ky. 1997).

2. The confidential and proprietary financial and business information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 61.878 (1) (c) 1. In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’” *Id.* at 768. Similarly, the Kentucky Supreme Court applied the KRS 61.878 (1) (c) 1. “competitive injury” exemption to financial information that was in the possession of Kentucky’s Parks Department in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995): “These are records of privately owned marina operators, disclosure of which would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such information about privately owned organizations.” The same reasoning applies here.

3. Verizon Access is a competitive local exchange carrier (“CLEC”) and competes with various other Kentucky local exchange carriers (“LECs”), including parties to the captioned access rate investigation, for a variety of services - including switched access service. While the rates for that service generally are subject to state commission jurisdiction and are disclosed in publicly filed tariffs, Verizon Access and other Kentucky CLECs have never been required to disclose the amount of revenue generated by individual access rate elements.

4. Verizon Access is complying with the Commission's Order and requesting the demand data to be afforded confidential treatment.

5. The worksheet reflects the business efforts and competitive position of Verizon Access. Verizon Access does not share this information with its various competitors in the telecommunications service business unless required by lawful process or pursuant to a protective agreement in a rate case. Likewise, those competitors do not share their own internal studies or similar information with Verizon.

6. The Commission has already granted confidential treatment in this case for access usage and revenue data and calculation of revenue shift under alternative assumptions, and amounts of traffic and access revenue received for certain switched access rate elements. *See, e.g.*, letter from Jeff Derouen to Douglas E. Hart dated September 16, 2011 (granting Cincinnati Bell's petition for confidential treatment). The Commission should protect the same type of information disclosed here, which clearly merits confidential protection pursuant to *Hoy, Marina Management*, and 61.878 (1) (c) 1.


7. If the Commission disagrees, however, it must hold an evidentiary hearing (a) to protect the due process rights of Verizon and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. Ct. App. 1982).

8. In accordance with the provisions of 807 KAR 5:001 Section 7, one physical copy of the confidential worksheet is being filed, and a copy with confidential information redacted is filed electronically herewith.

WHEREFORE, Verizon respectfully requests that the Commission grant confidential protection for the worksheet which supports its May 31, 2012 access tariff revision, or in the alternative, schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

June 1, 2012

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the electronic version of this filing made with the Commission on June 1, 2012, is a true and accurate copy of the document filed herewith in paper form, and the electronic version of the filing has been transmitted to the Commission.

A handwritten signature in black ink, appearing to read "Douglas F. Brent", with a long horizontal stroke extending to the right.

Douglas F. Brent